



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

Arnold Schwarzenegger
Governor

DEC 02 2009

In Reply Refer to:
LVL:262.0(23-21-02)

5010413

Coast Action Group
Attention Alan Levine
P.O. Box 215
Point Arena, CA 95468

Dear Mr. Levine:

COMMENTS ON REPORT OF INVESTIGATION FOR COMPLAINT (23-21-02) AGAINST STORNETTA FOR DIVERSIONS FROM GARCIA RIVER IN MENDOCINO COUNTY

Thank you for your letter dated October 6, 2009, submitting comments by the Coast Action Group (CAG) to the Report of Investigation, dated September 3, 2009, prepared by Complaint Unit staff pursuant to your water right complaint (23-21-02) against Walter Stornetta Ranch (Stornetta Ranch) for diversions from Garcia River. We have reviewed your 'argument and discussion' and respond to it as follows:

Response to your Notated Comments:

Note 1: Although CAG is only concerned with diversions in critical low flow periods (September through November), the Complaint Unit evaluated the potential for diversions to be unauthorized and/or injurious to public trust resources on a year-round basis.

Note 2: Your assertion that Stornetta Ranch made an 'illegal transfer without license' is incorrect. When Stornetta Ranch replaced its diversions from the surface water of Garcia River with wells pumping from below grade, Stornetta presumed the water pumped at the new wells was percolated groundwater. It was later determined to be from a subterranean stream. The State Water Resources Control Board (State Water Board) has discretionary authority to impose enforcement actions involving unauthorized diversions of water, and in doing so it may consider factors such as voluntary compliance by the diverter upon notification of an unauthorized diversion.

Response to your General Comments on Site Conditions

Much of your discussion in this section deals with your concerns for cumulative impacts to the flows in the Garcia River from all the diversions from the river. The State Water Board does not have the authority to deny a legitimate water right holder the exercise of his/her right without evidence that his/her diversion has a direct bearing on adverse impacts to valuable public trust resources. Your concerns regarding low flows and cumulative impacts would be more properly addressed through a stream wide adjudication of all diverters, in which both instream public trust resources and the relative priority of all water right holders are considered in allocating the stream's flow.

There are two methods of initiating such a process. The first is for an aggrieved party to go directly to the Superior Court and petition the Court to initiate an adjudication. The Superior Court could either try to deal with the adjudication on its own or the Court might choose to refer the matter to the State Water Board pursuant to Water Code sections 2000 et seq.

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California Environmental Protection Agency

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DEC 02 2009

The second method, pursuant to Water Code sections 2525 et seq., is for one or more claimants to water of any stream system to petition the State Water Board to determine the rights of the claimants to the water of that stream system. The California Supreme Court in National Audubon determined that a party with standing to raise public trust concerns could be a "claimant" with the ability to petition for a statutory adjudication. Consequently, any number of entities including environmental groups, Native American tribes, fishery agencies or concerned individuals have the ability to file a petition with the State Water Board asking that adjudications be initiated or existing Decrees be reevaluated and modified as necessary to protect public trust resources pursuant to the criteria identified in the National Audubon Society case. Please note, however, that all "claimants" could be responsible for paying the costs of the adjudication proceeding.

Your letter implied that staff stated that 'pumping from the underflow has no effect on aquatic habitat for fisheries.' Staff did not state that there was no effect, only that the effect was indeterminable and certainly less significant than any effect caused by diversion from the surface flow.

You also implied that the Division of Water Rights (Division) should enforce a requirement to measure Garcia River streamflow and maintain minimum bypass flows that was imposed by the Department of Fish and Game under Streambed Alteration Agreement R3-2001-0024. It is our understanding that this Streambed Alteration Agreement involved diversions of surface flow, and may no longer be applicable to subterranean stream diversions. In either case, the Division has no authority to enforce a requirement of a streambed alteration agreement on a riparian diverter, and, as stated above, the evidence is not available to impose such a condition under the State Water Board's public trust and/or reasonableness authority.

Another concern stated in this section is that no reporting term has been added to Stornetta Ranch's license. Under the provisions of the California Water Code, all diversions made under either appropriative water rights or riparian water rights are required to be reported to the Division of Water Rights. Stornetta Ranch is in compliance with these requirements. Legislation enacted this year imposes stricter reporting requirements beginning next year and more severe penalties for noncompliance with these requirements.

Response to your Comments on Staff's Conclusions

Conclusion 11.4: Appropriative licenses are independent of riparian water rights. Never-the-less, License 6470 has a place of use that is within the riparian boundary of Stornetta Ranch's property.

Conclusions 11.6 and 11.7: As stated earlier, the available evidence does not warrant taking action to limit Stornetta Ranch's diversions under what appear to be valid water rights.

Conclusion 11.9: Although CAG considers use of the waste pond water by Stornetta Ranch to be reasonable, and even desirable over fresh water diversions, Stornetta Ranch's use of such water is limited by water right law, as described in the Report of Investigation, and by water quality law as administered by the Regional Water Quality Control Board.

Conclusion 11.10: Reporting is a requirement for diversions made under both appropriative licenses and riparian claims of right.

Conclusion 11.11 and Staff Recommendation: Complaint Unit staff has addressed all the issues that are within the authority of the State Water Board.

DEC 02 2009

CAG Recommendations: Most of CAG's recommendations are:

- not within the permitting and/or public trust authority of the State Water Board;
- already being implemented by Stornetta Ranch because they are required by the California Water Code and/or case law;
- based on conclusions that are not supported by available evidence; or
- based on concerns regarding the cumulative impacts of all diversions in the Garcia River, for which a stream wide adjudication would be the appropriate course of action.

However, staff agrees with your recommendation to include the hydrogeologic findings on the subterranean stream in the file for A030892 for Point Arena Water Works.

The Division acknowledges your request, supported by Trout Unlimited, to defer taking final action on your complaint for 30 to 60 days to allow for further review. However, staff conducted a thorough review and investigation of the complaint allegations and determined that Stornetta Ranch is not currently making any unauthorized diversions from the Garcia River. Furthermore, the specific circumstances of this complaint, including but not limited to voluntary physical curtailment of all unauthorized diversions and written assurances of continuing compliance, do not warrant formal enforcement action against Stornetta Ranch by the Division. Therefore, the Division of Water Rights is closing Complaint (23-21-02) without taking further action. Closure of your complaint does not preclude the filing of a new complaint if additional evidence becomes available in the future.

If there are any questions, Laura Lavallee, the staff person assigned to your complaint can be reached via e-mail at LLavallee@waterboards.ca.gov or via telephone at (916) 341-5422. Her supervisor, Charles Rich, can be reached via e-mail at CRich@waterboards.ca.gov or via telephone at (916) 341-5377.

Sincerely,

Original Signed By

James W. Kassel
Assistant Division Chief

cc: Stornetta Ranch
c/o Hunter-Ruiz Consultants & Advocates
1017 L Street #599
Sacramento, CA 95814

The Source Group
Attention Paul Horton
3451 C Vincent Road
Pleasant Hill, CA 94523

Trout Unlimited of California
P.O. Box 3237
Santa Rosa, CA 95402-3237

Control Tag #2100
LLavallee\lfischer 11.05.2009 11.25.2009
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SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

If the information below is inaccurate, please line it out in red and provide current information.
Notify this office if ownership or address changes occur during the coming year.

PLEASE COMPLETE AND RETURN THIS FORM BY JULY 1, 1998.

OWNER OF RECORD: WALTER STORNETTA RANCH, ~~INC~~

WALTER STORNETTA RANCH, ~~INC~~
44100 STORNETTA DR
POINT ARENA, CA 95468

STATEMENT NO: 001041



TELEPHONE NUMBER:

(707) 882-2051

YEAR OF FIRST USE: 1906

PARCEL NO:

SOURCE: GARCIA RIVER
TRIBUTARY TO: PACIFIC OCEAN
COUNTY: MENDOCINO
DIVERSION

WITHIN: NE $\frac{1}{4}$ OF SW $\frac{1}{4}$ SECTION 36, T13N, R17W, MB&M.

A. Water is used under: Riparian claim ☒; Pre 1914 right ☒; Other (explain): _____

B. Year of first use (Please provide if missing above) _____

C. Amount of Use - Enter the amount of water used each month. If monthly and annual use are not known, check the months in which water was used.

Amounts below are: ☒ Gallons

☐ Acre-feet

☐ (other)

approx 25 mil gals/mo./yr.

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1995				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
1996				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
1997				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			

D. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation 350+ acres; Stockwatering ☒; Domestic _____

Other (specify) _____

E. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

different crop rotation & more efficient applications

F. If part of the water listed in Part C consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: 2/6/98, 19 98 at Pt. Arena, California

SIGNATURE: Walter R. Stornetta

PRINTED NAME: WALTER

(FIRST NAME)

(MIDDLE INIT.)

(LAST NAME)

COMPANY NAME: Walter R. Stornetta

See back of page for General Information. If there is insufficient space for your answers, please number them in the space provided on the back of this form.

[illegible]

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

A riparian right enables an owner of land bordering a natural lake or stream to take and use water on his riparian land. Riparian land must be in the same water shed as the water source and must never have been severed from the sources of supply by an intervening parcel without reservation of the riparian right to the severed parcel. Generally, a riparian water user must share the water supply with other riparian users. Riparian rights may be used to divert the natural flow of a stream but may not be used to store water for later use or to divert water which originates in a different watershed, or return flows from use of groundwater.

An appropriative right is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914 new appropriators have been required to obtain a permit and license from the State.

Statements of Water Diversion and Use must be filed by a riparian and pre-1914 appropriative water users. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversion, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include:

"Statements of Water Diversion and Use"

"Information Pertaining to Water Rights in California"

"Water Rights" for Stockponds Constructed Prior to 1969

"Appropriation of Water in California"

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
Division of Water Rights

P.O. BOX 2000 SACRAMENTO, CA 95812-2000
901 P ST. SACRAMENTO, CA 95814
(916) 322-4503

(916) 657-1875

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

DIVERTER OF RECORD:

STATEMENT NO: 010413

WALTER D STORNETTA
WALTER D STORNETTA RANCH
POINT ARENA, CALIF 95468

Envelope Rat.

44100 Stornetta Dr.

TELEPHONE NUMBER:
(707) 882-2328

IF NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE: GARCIA RIVER

TRIBUTARY TO: PACIFIC OCEAN

COUNTY: MENDOCINO

DIVERSION

WITHIN: NE1/4 OF SW1/4 SECTION 36, T13N, R17W, MDB&M.

INSTRUCTIONS: Please complete Items A, B and C. Item D should be completed if you replaced all or part of your regular water supply with reclaimed or polluted water. RETURN THIS FORM BY JULY 1, 1993. (Additional information on reverse side of this form.)

A. Amount of Use - Fill in the amount of water used each month. If monthly and annual use are not known, check the months in which water was used.

Amounts below are: ☐ Gallons
☒ Acre-feet
☐ _____ (other)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1990					90	90	90	90	90	90			
1991					90	90	90	90	90	90			
1992					90	90	90	90	90	90			

B. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation 350 acres.

Stockwatering 600 animal units

Domestic 6 families

Other (specify) _____

C. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

D. If part of the water listed in Part A consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: 6/10/93, 1993, at _____, California

Signature: Walter D Stornetta

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

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- "Water Rights for Stockponds Constructed Prior to 1969"
- "Appropriation of Water in California"

S-10413

**** PLEASE COMPLETE, SUBMIT THE ORIGINAL AND MAKE A COPY FOR YOUR RECORDS ****

**STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS**

P.O. BOX 2000 SACRAMENTO, CA 95812-2000

MM 1-5-96

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
SACRAMENTO
1995 APR 17 PM 2:11

STATEMENT NO: S010413
OWNER OF RECORD: WALTER D STORNETTA

WALTER D STORNETTA
972 FAIRVIEW AVENUE
UKIAH, CA 95482

WALTER STORNETTA RANCH
44100 Stornetta Dr
Pt. Arena, Cal 95468

SOURCE: GARCIA RIVER
TRIBUTARY TO: PACIFIC OCEAN
COUNTY: MENDOCINO
DIVERSION
WITHIN: NE¼ OF SW¼ SECTION 36, T13N, R17W, MDB&M.

TELEPHONE NUMBER:
(707) 882-2051
YEAR OF FIRST USE: 1906
PARCEL NO: 2

(If any of the above information is inaccurate or missing, please correct. Notify this office if ownership or address changes occur during the coming year.)

COMPLETE AND RETURN THIS FORM BY JULY 1, 1995

- A. Water is used under: Riparian claim ☒; Pre 1914 right ☒; Other (explain) _____
- B. Year of first use (Please provide if missing above) _____
- C. Amount of Use - Enter the amount of water used each month. If monthly and annual use are not known, check the months in which water was used.

Amounts below are: ☐ Gallons ☒ Acre-feet ☐ (other) _____

	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	TOTAL ANNUAL
1992				50	100	100	100	100	100	50			
1993				"	"	"	"	"	"	"			
1994				"	"	"	"	"	"	"			

- D. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.
- Irrigation 340 acres; Stockwatering 650; Domestic _____
- Other (specify) _____

***** CONTINUE ON BACK PAGE *****

- E. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

None

- F. If part of the water listed in Part C consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: 4-12, 1995, at Pt. Arena, Calif., California

SIGNATURE: *Walter Stornetta*

PRINTED NAME: WALTER

(FIRST NAME)

R.
(M. NAME)

Stornetta
(LAST NAME)

COMPANY NAME: WALTER Stornetta Ranch

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

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"Water Rights for Stockponds Constructed Prior to 1969"

"Appropriation of Water in California"

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
P.O. Box 2000
Sacramento, CA 95812-2000

STATEMENT OF WATER DIVERSION AND USE
INFORMATION SHEET

STATEMENT NO. _____

DIVERSION SITE:

OWNER'S NAME WALTER Stornetta Ranch
(FIRST) (MIDDLE) (LAST)

PARCEL NO. SAME AS those below

PLACE OF USE:

OWNER'S NAME WALTER Stornetta Ranch
(FIRST) (MIDDLE) (LAST)

1. PARCEL NO. 133/050/01 133-050-01
2. PARCEL NO. 133/020/12 133-030-09
3. PARCEL NO. 133/040/01 027-021-04

PERSON OR FIRM TO RECEIVE ALL CORRESPONDENCE AND SUPPLEMENTAL
STATEMENTS:

OWNER/LESSEE/AGENT/OTHER WALTER Stornetta Ranch
NAME
(FIRST) (MIDDLE) (LAST)

MAILING ADDRESS 44100 Stornetta Dr
Pt. Arena Calif 95455
(CITY) (STATE) (ZIP)

TELEPHONE NO. (707) 882 - 2051

OTHERS USING ABOVE DIVERSION LOCATION:

1. NAME None
(FIRST) (MIDDLE) (LAST)

MAILING ADDRESS _____
(CITY) (STATE) (ZIP)

TELEPHONE NO. (_____) _____ - _____

2. NAME _____
(FIRST) (MIDDLE) (LAST)

MAILING ADDRESS _____
(CITY) (STATE) (ZIP)

TELEPHONE NO. (_____) _____ - _____

☐ ADDITIONAL INFORMATION CONTINUED ON BACK OF PAGE OR ATTACHED

PLEASE USE THE OTHER SIDE TO PROVIDE THE ABOVE INFORMATION FOR
ADDITIONAL OWNERS OR PLACES OF USE AND CHECK THE ADDITIONAL
INFORMATION BOX.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
Division of Water Rights

P.O. BOX 2000 SACRAMENTO, CA 95810
901 P ST. SACRAMENTO, CA
(916) 322-4503

SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

1990 JAN 29 PM 3:15
DIV. OF WATER RIGHTS
SACRAMENTO

DIVERTER OF RECORD:

WALTER D STORNETTA
WALTER D STORNETTA RANCH
POINT ARENA, CALIF 95468

STATEMENT NO: 010413

TELEPHONE NUMBER:
(707) 882-2328

IF NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE: GARCIA RIVER

TRIBUTARY TO: PACIFIC OCEAN

COUNTY: MENDOCINO

DIVERSION

WITHIN: NE1/4 OF SW1/4 SECTION 36, T13N, R17W, MDB&M.

INSTRUCTIONS: Please complete Items A, B and C. Item D should be completed if you replaced all or part of your regular water supply with reclaimed or polluted water. RETURN THIS FORM BY JULY 1, 1990. (Additional information on reverse side of this form.)

- A. Amount of Use - Fill in the amount of water used each month. If monthly and annual use are not known, check the months in which water was used.
- Amounts below are: ☒ Gallons ☐ Acre-feet ☐ (other)

Note - these are guestimates - not actual

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1987					30 m.	35 m	35 m	35 m	30 m	10 m			175 million gal.
1988				10 m	30 m	35 m	35 m	30 m	30 m	10 m			180 "
1989					30 m	35 m	35 m	35 m	30 m	10 m			175 "

- B. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation 300 ± acres

Stockwatering

Domestic

Other (specify)

- C. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

we went from 2-25 hp & 1 20 hp To
1 40 hp & 1 25 hp for more efficiency

- D. If part of the water listed in Part A consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: 1-10-90, 19 at Pt. Arena, Calif., California

Signature: Walter R. Stornetta

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

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"Appropriation of Water in California"

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
Division of Water Rights

"FILE"

P.O. BOX 2000 SACRAMENTO, CA 95810
901 P ST. SACRAMENTO, CA
(916) 322-4503

(916) 324-5741
SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE

DIVERTER OF RECORD:

STATEMENT NO: 010413

WALTER D STORNETTA
WALTER D STORNETTA RANCH
POINT ARENA, CALIF 95468

TELEPHONE NUMBER:
(707) 882-2328

IF NAME/ADDRESS/PHONE NO. IS WRONG OR MISSING, PLEASE CORRECT.

SOURCE: GARCIA RIVER

TRIBUTARY TO: PACIFIC OCEAN

COUNTY: MENDOCINO

DIVERSION

WITHIN: NE1/4 OF SW1/4 SECTION 36, T13N, R17W, MDB&M.

INSTRUCTIONS: Please complete Items A, B and C. Item D should be completed if you replaced all or part of your regular water supply with reclaimed or polluted water. RETURN THIS FORM BY JULY 1, 1987. (Additional information on reverse side of this form.)

- A. Amount of Use - Fill in the amount of water used each month. If monthly and annual use are not known, check the months in which water was used.
- Amounts below are: ☐ Gallons ☐ Acre-feet ☐ _____ (other)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
1984				90	90	90	90	90	90	90			
1985				90	90	90	90	90	90	90			
1986				90	90	90	90	90	90	90			

- B. Purpose of Use - Specify number of acres irrigated, stock watered, persons served, etc.

Irrigation 380 acres

Stockwatering 400 head dairy animals

Domestic 5 households - 12 persons

Other (specify) _____

- C. Changes in Method of Diversion - Describe any changes in your project since your previous statement was filed. (New pump, enlarged diversion dam, location of diversion, etc.)

- D. If part of the water listed in Part A consists of reclaimed or polluted water, please indicate the annual amounts of reclaimed or polluted water in the space below.

I declare under penalty of perjury that the information in this report is true to the best of my knowledge and belief.

DATED: Jan 7, 19 87, at Point Arena Calif., California

Signature: Walter D Stornetta

STATE WATER RESOURCES
COMMISSION

1987 JAN 16 AM 11:40

DIV. OF WATER RIGHTS
SACRAMENTO

GENERAL INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA

There are two principal types of surface water rights in California. They are riparian and appropriative rights.

A riparian right enables an owner of land bordering a natural lake or stream to take and use water on his riparian land. Riparian land must be in the same watershed as the water source and must never have been severed from the source of supply by an intervening parcel without reservation of the riparian right to the severed parcel. Generally, a riparian water user must share the water supply with other riparian users. Riparian rights may be used to divert the natural flow of a stream but may not be used to store water for later use or to divert water which originates in a different watershed, or return flows from use of groundwater.

An appropriative right is required for use of water on nonriparian land and for storage of water. Generally, appropriative rights may be exercised only when there is a surplus not needed by riparian water users. Since 1914 new appropriators have been required to obtain a permit and license from the State.

Statements of Water Diversion and Use must be filed by riparian and pre-1914 appropriative water users. The filing of a statement (1) provides a record of water use, (2) enables the State to notify such users if someone proposes a new appropriation upstream from their diversion, and (3) assists the State to determine if additional water is available for future appropriators.

The above discussion is provided for general information. For more specific information concerning water rights, please contact an attorney or write to this office. We have several pamphlets available. They include:

"Statements of Water Diversion and Use"

"Information Pertaining to Water Rights in California"

"Water Rights for Stockponds Constructed Prior to 1969"

"Appropriation of Water in California"

AGREEMENT

THIS AGREEMENT is made and entered into by and between MENDOCINO COAST PROPERTIES, GERTRUDE J. ELDER, MOORES ASSOCIATES, WILLIAM M. MOORES, TONA E. MOORES, GORDON MOORES and SANDRA MOORES, (hereinafter "Moores") and WALTER D. and JANE T. STORNETTA, and WALTER R. and DONNA K. STORNETTA (hereinafter "Stornettas") on this 18th day of October, 1986.

R E C I T A L S:

A. The Stornettas are the owners of approximately 547 acres of agricultural land located north of Mallo Pass Creek. They irrigate up to 100 acres of that land by diverting water from Mallo Pass Creek by means of a pump, designed to pump up to 400 gallons per minute, which pumps into a holding pond; a sprinkler system is run from the holding pond. The holding pond holds water sufficient to sprinkle the land for a maximum of three days without recharge. Stornettas take such water pursuant to claimed riparian water rights, not pursuant to a permit or license to appropriate water. In a normal year, Stornettas irrigate from late spring or early summer until approximately the end of August. It is possible they might irrigate into September in some years, depending upon weather and the crop involved. During normal years, when water is being diverted from Mallo Pass Creek to the holding pond, a minimum of 135 gallons per minute bypasses the Stornetta diversion point

and flows down stream. The Stornetta diversion point is located approximately one-half mile up stream from the point where Mallo Pass Creek enters the CalTrans right of way for Highway 1.

B. Moores are the developers of the Irish Beach Subdivision, which is located south of Mallo Pass Creek; they have pending before the Mendocino County Board of Supervisors a proposed amendment to the Mendocino County General Plan which will, among other things, bring the Nichols Ranch (located south of the present Irish Beach subdivision) within the urban side of the urban/rural boundary line, which now includes the Irish Beach subdivision, and increase the total number of authorized residential developments within the Irish Beach subdivision by approximately 30 and provide for the establishment of a small commercial location on the Nichols Ranch. The Board of Supervisors has indicated, as a condition of approving the amendment, that the availability of an adequate water supply must be demonstrated for full development of Irish Beach after the amendment, without harm to Stornettas' agricultural enterprise. Moores have a permit from the State to appropriate up to .58 cubic feet per second (over 200 gallons per minute), not to exceed 380 acre-feet per year, from Mallo Pass Creek for use within the boundaries of the Irish Beach Water District. Moores have agreed with the Irish Beach Water District, which supplies water to the

Irish Beach subdivision area, to assign to the District the rights under this permit and to pay for improvements necessary to divert water from Mallo Pass Creek and deliver that water to the District's system.

C. The Irish Beach Water District can meet all of its existing demand for water within the District boundaries including development of all presently existing lots, by obtaining an additional thirty five (35) gallons of water per minute from Mallo Pass Creek pursuant to Moores permit. By obtaining 110 gallons per minute pursuant to such permit, the District would be able to adequately supply water to accommodate development (i.e., creation of lots by subdivision) of all areas of Irish Beach, including the area subject to Moores' proposed amendment. This area is already within the District's boundaries.

D. The point of diversion for delivery of water to the Irish Beach Water District pursuant to the permit to be assigned is at a point in Mallo Pass Creek at or near the easterly boundary of the CalTrans right of way for Highway 1 across Mallo Pass Creek. From this point water in Mallo Pass Creek normally flows under Highway 1 to the beach and does not reach the Pacific Ocean except during periods of high water, when the sand barrier across Mallo Pass Creek is washed away.

E. The Moores and Stornettas enter into this agreement to facilitate utilization of their respective water

rights. The parties intend that the Irish Beach Water District is a beneficiary of this agreement, and may enforce the parties' obligations hereunder, even though this agreement imposes no obligations on that District.

F. Both Moores and Stornettas are represented by Rawles, Hinkle, Carter, Brigham, Gaustad & Behnke. Jared G. Carter of such firm has pointed out to the Moores and Stornettas the conflicting interests they have in these circumstances. The Moores and the Stornettas nevertheless have requested Jared G. Carter to prepare this agreement.

THEREFORE, the parties agree as follows:

1. Moores recognize, and will not contest, the validity of Stornettas' claim to divert water from Mallo Pass Creek in accordance with the Stornettas' past and present practices and as provided for herein.

2. Stornettas recognize, and will not contest, the validity of the Moores license and agree not to contest the diversion of water pursuant to that license under the terms agreed to herein.

3. The parties agree that in periods of short water supply (when less than 500 gallons per minute is flowing in Mallo Pass Creek at the Stornettas' point of diversion) they will operate as follows:

- a. Stornettas will allow to pass their point of diversion enough water, up to a maximum of 110 gallons per minute, to serve the needs of the Irish Beach Water District

in conjunction with that District's other sources of water supply.

b. If operational conditions on the Stornettas Ranch make it necessary (i.e., to save a crop that would otherwise be destroyed by lack of water) the provisions in subparagraph a. above may be ignored by the Stornettas, and they may take all the water from Mallo Pass Creek, for a period of three days upon three days prior written notification to the Irish Beach Water District of their intent to do so.

c. If operational conditions within the boundaries of the Irish Beach Water District require the diversion of more than 110 gallons per minute (i.e., in case of a fire that has consumed all of the District's stored water) Stornettas will, upon twenty four (24) hours prior written notice from the District, allow more than 110 gallons a minute, up to a total of 200 gallons per minute, to bypass their point of diversion for a period of no more than three days.

d. The parties' intent is to ensure cooperation during periods of water shortage to assure that both the Stornettas' and the District's essential needs are met. In this regard, neither party will seek any injunctive relief designed to curtail or cease the other party's diversion of water from Mallo Pass Creek during such periods without prior consultation with the other party and without making a

written offer to submit to binding arbitration by an hydraulic engineer, agreed upon by the parties or, in the absence of such agreement, designated by the Superior Court of Mendocino County, who will be instructed to design and supervise a water allocation scheme for the parties. Neither Moores nor Stornettas will be required to pay more than one-half (1/2) the cost of such arbitration. It is the intent of the parties what such prior consultation may result in a plan of water conservation and/or alternative hours of diversion from the creek, if a method of bypass of water by the Stornettas' point of diversion is not adequate to meet all concerned needs, that will accommodate all interests.

e. If experience indicates that installation of a larger pump (i.e., one that pumps more water than 400 gallons per minute) by Stornettas is necessary and appropriate to facilitate Stornettas' operation in a manner consistent with this agreement (for example, if it is necessary to pump greater volumes of water to fill the Stornettas' holding pond during periods when the District is not taking water from the creek), Moores will pay the cost of installing such a larger pump.

4. Stornettas will allow the District or Moores access to the District's and Moores' point of diversion by means of a roadway over Stornettas' property with a tractor or backhoe each year, or if experience indicates the

necessity thereof, twice a year, for maintenance of the point of diversion, such as breaking the seal of gravel covering the diversion point; provided, however such access can be had only upon at least twenty four (24) hours prior written notice to Stornettas and, at the option of Stornettas, in the company of Stornettas or their designee. Moores, or the District, will maintain this access road and their result of access is subject to performance of this obligation.

5. This agreement is binding upon and benefits the heirs, successors and assigns of the parties and is intended to run with and benefit and bind the land of the Stornettas and Moores.

6. In the event of litigation between the parties to enforce or interpret this agreement, the prevailing party shall be entitled to recover reasonable attorneys fees and costs.

IN WITNESS WHEREOF, the parties have executed this agreement on the date hereinabove set forth.

MENDOCINO COAST PROPERTIES

By Gertrude J. Elder

GERTRUDE J. ELDER

MOORES ASSOCIATES

By William M. Moores

William M. Moores
WILLIAM M. MOORES

Tom E. Moores
TONA E. MOORES

Gordon Moores
GORDON MOORES

Sandra Moores
SANDRA MOORES

Walter D. Stornetta
WALTER D. STORNETTA

Jane T. Stornetta
JANE T. STORNETTA

Walter R. Stornetta
WALTER R. STORNETTA

Donna K. Stornetta
DONNA K. STORNETTA

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
STATEMENT OF WATER DIVERSION AND USE
(This is not a Water Right)

This statement should be typewritten or legibly written in ink.

STATE WATER RESOURCES
CONTROL BOARD
JUN 23 07 AM '81
DIVISION OF WATER RIGHTS

10413

A. Name of person diverting water WALTER D. STORNETTA
Address Walter Stornetta Ranch, Point Arena, Calif. Telephone: 707 882 2328
207 8322348B. Name of body of water at point of diversion Carole River
Tributary to -----C. Place of diversion NE 1/4 SW 1/4 Section 26, Township 13N, Range 17W, B&M,
Mendocino County, or locate it on sketch of section grid on reverse side with regard to section
lines or prominent local landmarks.D. Name of works ---E. Capacity of diversion works 3.0 cfs cubic feet per second
Capacity of storage reservoir --- gallons per minute
gallons
acre-feet

State quantity of water used each month in gallons or acre-feet

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
					90	90	90	90	90	90			1080
					110	110	110	110	110	110			1100

If monthly and annual use are not known, check months in which water was used. State extent of use in
units, such as acres of each crop irrigated, average number of persons served, number of stock watered, etc.350 head dairy cattle, 200 acre pasture, 100 acre Oats, Barley, 5 families, 3 menMaximum annual water use in recent years 450 cfs gallons
acre-footMinimum annual water use in recent years 200 cfs gallons
acre-footType of diversion facility: gravity ---, pump XXMethod of measurement: weir ---, flume ---, electric power meter ---, water meter ---, estimate XXF. Purpose of use (what water is being used for) Water for stock (350 Head), irrigate pasture
and crops for dairy feed, vegetable garden.

G. General description or location of place of use (use sketch of section grid on reverse side if you desire)

H. Year of first use as nearly as known 1906I. Name of person filing statement Walter D. StornettaPosition Owner Organization ---Address Point Arena, Cal. 95468 Telephone: 707 882 2328

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

DATED: June 12, 1981 at Point Arena, California.Signature: ---

SOURCE 40 (7/77)

See Instructions on Reverse Side

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